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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,033	12/29/2005	Olivier Charrois	0512-1287	6748

466 7590 10/03/2007
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EXAMINER

WALKER, AMANDA H

ART UNIT	PAPER NUMBER
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3709

MAIL DATE	DELIVERY MODE
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10/03/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/542,033

Applicant(s)

CHARROIS, OLIVIER

Examiner

Amanda H. Walker

Art Unit

3709

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7-13-2005</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities: There are several points at which aluminum is referred to as a ceramic (paras. 0003, 0016, and 0017). Aluminum is not a ceramic, so this appears to be a typo.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aldinger (EP 0722703) in view of Sheldon et al. (EP 1195149). The attached DERWENT English abstract is utilized for clarifications.

Aldinger teaches a first acetabular implant which has first and second parts. The first part 17 is made of a hi-molecular plastic/polymeric material (English Abstract), has a cavity, and has a chamfered edge. The second part 15 is made of a ceramic (English Abstract), has a cavity of substantially hemispherical shape, and has an edge 15.2 that is recessed in the first part 17. Aldinger also teaches a second implant which has a

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substantially spherical head 13 (FIG. 1). The second implant is adapted to replace the terminal portion of the femur. Aldinger also teaches that the first part has a wall portion that lines up with the cavity of the second part.

Aldinger does not expressly teach that the head of the second implant has a rod, or that the head terminates a rod of the second implant. However, Sheldon et al. teaches a head that has a rod (FIG. 25). Aldinger and Sheldon et al. are combinable because they are from the same field of endeavor, namely, hip prostheses. At the time of the invention, it would have been obvious to a person having ordinary skill in the art to modify the head taught by Aldinger with the rod taught by Sheldon et al., and one would have been motivated to do so in order to provide a connection mechanism between the acetabular region and the femoral region of the implant.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aldinger (EP 0722703) in view of Sheldon et al. (EP 1195149) as applied to claim 4 above, and further in view of Townley (U.S. Patent No. 6,096,084).

Aldinger and Sheldon et al. teach the basic first and second implants as applied above.

The English abstract of Aldinger does not teach that the articular prosthesis is adaptable to the shoulder region. However, Townley teaches a similar prosthesis which is adaptable to the shoulder region (4:15-20 and 4:45). Aldinger and Townley are combinable because they are from the same field of endeavor, namely, joint prostheses. At the time of the invention, it would have been obvious to a person having

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ordinary skill in the art to modify the prostheses taught by Aldinger to fit the shoulder as taught by Townley, and one would have been motivated to do so for their own economic benefit.

Other prior art considered applicable to the instant claims but not used in these rejections can be found in the enclosed document entitled "Notice of References Cited".

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amanda H. Walker whose telephone number is (571)270-3296. The examiner can normally be reached on 9-4, M-Th, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Eashoo can be reached on (571) 272-1197. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AHW
9-27-07

A handwritten signature in black ink, appearing to read "Mark Eashoo". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

MARK EASHOO, PH.D.
SUPERVISORY PATENT EXAMINER

301 Sep 07